

RESOLUTION 01-03-02

DIGEST

Ballot Designations: Establishing Statewide Advisory Committee

Amends Elections Code section 13107 to require the Secretary of State to establish a statewide advisory committee to review ballot designations.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Elections Code section 13107 to require the Secretary of State to establish a statewide advisory committee to review ballot designations. This resolution should be disapproved because it is likely to further politicize the voting process without ensuring accurate ballots.

Elections Code section 13107 describes the permissible designations that may appear on a ballot under the name of each candidate. It also prohibits the Secretary of State or any other election official from accepting candidate designations that violate those rules or that are otherwise misleading, inaccurate or confusing.

There does not appear to be any means of forcing such officials to review proposed designations or to reject an improper designation, other than seeking a writ of mandate. This resolution attempts to address that omission by requiring the Secretary of State to “establish” a statewide “advisory committee” to “review” ballot designations.

The creation of a less drastic and more efficient means of ensuring neutral and informative ballot designations may be a laudable goal. The establishment of a bipartisan, neutral committee to recommend acceptance or denial of designations based on the statutory criteria might achieve these ends. However, as currently drafted, this resolution does not do so. Because the proposed committee is advisory only, it does not solve the problem of the election official who refuses to make a decision. Second, because the partisan Secretary of State would select the advisory committee, the committee’s recommendations are likely to be partisan and political rather than neutral and adjudicatory. Finally, even assuming that it would work at the statewide level, the resolution would not solve the problem at the local election level where ballot designation decisions are made by the local registrars, not by the Secretary of State.

Disputes over ballot designations are better left to the court system than to a potentially partisan committee.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Elections Code Section 13107 to read as follows:

1 §13107

2 (a) With the exception of candidates for Justice of the State Supreme Court or court
3 of appeal, immediately under the name of each candidate, and not separated from the name
4 by any line, may appear at the option of the candidate only one of the following
5 designations:

6 (1) Words designating the elective city, county, district, state, or federal office which
7 the candidate holds at the time of filing the nomination documents to which he or she was
8 elected by vote of the people, or to which he or she was appointed, in the case of a superior
9 or municipal court judge.

10 (2) The word "incumbent" if the candidate is a candidate for the same office which
11 he or she holds at the time of filing the nomination papers, and was elected to that office by
12 a vote of the people, or, in the case of a superior or municipal court judge, was appointed to
13 that office.

14 (3) No more than three words designating either the current principal professions,
15 vocations, or occupations of the candidate, or the principal professions, vocations, or
16 occupations of the candidate during the calendar year immediately preceding the filing of
17 nomination documents. For purposes of this section, all California geographical names shall
18 be considered to be one word. Hyphenated words that appear in any generally available
19 standard reference dictionary, published in the United States at any time within the 10
20 calendar years immediately preceding the election for which the words are counted, shall be
21 considered as one word. Each part of all other hyphenated words shall be counted as a
22 separate word.

23 (4) The phrase "appointed incumbent" if the candidate holds an office other than a
24 judicial office by virtue of appointment, and the candidate is a candidate for election to the
25 same office, or, if the candidate is a candidate for election to the same office or to some
26 other office, the word "appointed" and the title of the office. In either instance, the
27 candidate may not use the unmodified word "incumbent" or any words designating the
28 office unmodified by the word "appointed." However, the phrase "appointed incumbent"
29 shall not be required of a candidate who seeks reelection to an office which he or she holds
30 and to which he or she was appointed, as a nominated candidate, in lieu of an election,
31 pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673,
32 10229, or 10515 of this code.

33 (b) ~~Neither the Secretary of State nor any other election official shall accept a~~
34 ~~designation of which any of the following would be true: The Secretary of State shall~~
35 ~~establish a statewide advisory committee to review ballot designations that have been~~
36 ~~brought to his or her attention, and he or she shall not accept a designation of which any of~~
37 ~~the following would be true:~~

38 (1) It would mislead the voter.

39 (2) It would suggest an evaluation of a candidate, such as outstanding, leading,
40 expert, virtuous, or eminent.

41 (3) It abbreviates the word "retired" or places it following any word or words which
42 it modifies.

43 (4) It uses a word or prefix, such as "former" or "ex-," which means a prior status.
44 The only exception is the use of the word "retired."

45 (5) It uses the name of any political party, whether or not it has qualified for the

46 ballot.
47 (6) It uses a word or words referring to a racial, religious, or ethnic group.
48 (7) It refers to any activity prohibited by law.
49 (c) If, upon checking the nomination documents, the election official finds the
50 designation to be in violation of any of the restrictions set forth in this section, the election
51 official shall notify the candidate by registered or certified mail return receipt requested,
52 addressed to the mailing address appearing on the candidate's nomination documents.
53 (1) The candidate shall, within three days from the date of receipt of the notice,
54 appear before the election officer or, in the case of the Secretary of State, notify the
55 Secretary of State by telephone, and provide an alternate designation.
56 (2) In the event the candidate fails to provide an alternate designation, no designation
57 shall appear after the candidate's name.
58 (d) No designation given by a candidate shall be changed by the candidate after the
59 final date for filing nomination documents, except as specifically requested by the elections
60 official as specified in subdivision (c) or as provided in subdivision (e).
61 (e) The designation shall remain the same for all purposes of both primary and
62 general elections, unless the candidate, at least 98 days prior to the general election, requests
63 in writing a different designation which the candidate is entitled to use at the time of the
64 request.
65 (f) In all cases, words so used shall be printed in 8-point roman uppercase and
66 lowercase type except that, if the designation selected is so long that it would conflict with
67 the space requirements of Sections 13207 and 13211, the elections official shall use a type
68 size for the designation for each candidate for that office sufficiently smaller to meet these
69 requirements.
70 (g) Whenever a foreign language translation of a candidate's designation is required
71 under the Voting Rights Act of 1965 (42 U.S.C.A. Sec. 1971), as amended, to appear on the
72 ballot in addition to the English language version, it shall be as short as possible, as
73 consistent as is practicable with this section, and shall employ abbreviations and initials
74 wherever possible in order to avoid undue length.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Subdivision (b), which leaves the decision to accept ballot designations up to the Secretary of State or any other election official, leaves a gap in that these officials do not want to be involved in the ballot designation process.

This Resolution: This resolution would provide assistance to the Secretary of State and registrars of voters throughout the state by establishing a committee whose particular focus will be to advise on the validity of ballot designations.

The Problem: While this might seem like a trivial issue it has forced candidates to seek judicial

intervention to review opponent's ballot designations because election officials (registrars of voters) don't seem to want to get involved. Courts are also hesitant to address this issue. These designations are very important to voters, and they have a great impact in low turnout elections like judicial contests because voters come to a decision based solely on the designation attached to the ballot. A well publicized case occurred earlier this year, where a candidate's ballot designation of "Admiral/Bar President" was challenged because the candidate was actually a rear admiral (lower half) and his then current occupation was not as bar president. The registrar of voters said that he would allow the designation if a court order didn't hold to the contrary. The registrar of voters did not want to make the decision.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE:

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

It is not necessary to create another level of bureaucracy in the voting system merely to establish that a ballot designation is valid. The Secretary of State and registrars of voters are charged with that responsibility under the current law. The proponent cites a case which occurred earlier this year where the candidate's ballot designation of "Admiral/Bar President" was challenged in court because he was a rear-admiral and not currently bar president, noting that the registrar of voters left the decision to the court and did not want to make the decision. Opposing candidates may, and often do, bring to the voters any inconsistency in their opponents' ballot designations. To change the law and create a new committee is not necessary, even in light of the current case law.